



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

SENT VIA EMAIL – REQUEST DELIVERY RECEIPT

February 5, 2021

Daryl D. Smith
Chairman, President, & Chief Executive Officer
Troy Corporation
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Florham Park, New Jersey 07932
Email: smithd@troycorp.com

Bill Reilley
Environmental Manager
Troy Chemical Corporation
One Avenue L
Newark, New Jersey 07105
Email: reilleyw@troycorp.com

Re: Notice of Potential Violations and Opportunity to Confer ("NOPVOC")
Resource Conservation & Recovery Act, as amended ("RCRA") and
New Jersey's EPA Authorized Hazardous Waste Regulations
Troy Chemical Corporation, Newark, New Jersey

Gentlemen:

Information currently available to the United States Environmental Protection Agency, Region 2 ("EPA") suggests that Troy Chemical Corporation ("Troy Chemical") may be in violation of RCRA and New Jersey's EPA authorized hazardous waste regulations at the Troy Chemical facility in Newark, New Jersey. By this letter, EPA is extending to you an opportunity to advise the Agency, in person, via a conference call or in writing, of any further information the EPA should consider with respect to the potential violations. The information available to EPA, as well as EPA's proposed findings, are summarized below.

Background

On or about July 23-25, 2019, EPA conducted an inspection of the Troy Chemical facility to determine, among other things, Troy Chemical's compliance with RCRA and New Jersey's authorized hazardous waste regulations. On or about November 4, 2019, EPA issued Troy Chemical a combined Notice of Violation ("NOV") and Information Request Letter ("IRL") regarding hazardous waste activities at the Troy Chemical Newark facility. On or about January 21, 2020, Troy Chemical emailed EPA a certified response to EPA's combined NOV and IRL ("Response"). Troy Chemical's Response incorporated information it previously submitted to EPA in August 2019 in response to outstanding questions discussed during EPA's July 2019 Inspection.

Based upon EPA's 2019 inspection and Troy Chemical's Response, EPA has reason to believe that Troy Chemical failed to:

- a) make hazardous waste determinations for solid waste generated at its facility pursuant to 40 CFR § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a); and
- b) comply with the conditions set forth in 40 C.F.R. § 262.34(a), as incorporated by reference in NJAC 7:26G-6.1(a), that if complied with would have allowed the Troy Chemical facility to store waste for up to 90 days without a permit and stored hazardous waste without a permit in violation of 40 C.F.R. § 270.1 as incorporated by reference by NJAC 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.

EPA would likely seek a proposed total penalty of **\$58,200** for these violations in any future administrative enforcement action.

Issuance of Administrative Complaint and Proposed Penalty Under RCRA

EPA is prepared to proceed with the issuance of a formal administrative complaint that would commence an administrative enforcement proceeding against Troy Chemical for the above referenced violations. Such action would be prosecuted under Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and the complaint would likely allege the violations identified above. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as modified by the Federal Civil Penalties Inflation Adjustment Act as amended through 2015 ("Inflation Adjustment Penalty Act"), any person who violates RCRA is liable to the United States for a penalty up to \$102,638 per day for each violation occurring after November 2, 2015 where penalties are assessed on or after December 23, 2020. See 85 Fed. Reg. 83818, 83821 (Dec. 23, 2020).

In a proceeding against Troy Chemical, the company faces a potential per day monetary penalty for each hazardous waste violation. The precise penalty amount that EPA would seek in a RCRA Subtitle C enforcement action would be consistent with the applicable guidance set forth in the "2003 RCRA Civil Penalty Policy" that takes into account, along with other unique factors, the potential for harm and the extent of deviation with the requirements associated with the violative actions alleged by EPA. This policy can be found on the Internet at the following address:

<https://www.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. The penalties calculated under this policy are adjusted upward to account for inflation consistent with a January 15, 2020 guidance

entitled “Amendments to EPA’s Civil Penalty Policies to Account for Inflation (effective Jan. 15, 2020).”

EPA’s preliminary calculation regarding an appropriate penalty for the two potential RCRA Subtitle C violations cited above is \$58,200. This penalty amount is broken down as follows: failure to make hazardous waste determinations - \$14,100; and storage of hazardous waste without interim status or a permit - \$44,100.¹

RCRA Settlement Discussions

Rather than immediately commencing a civil enforcement action, EPA wishes to see if you want to pursue another avenue to resolve these potential violations and to explore settlement possibilities through direct discussions before any case is filed. In accordance with rules that apply to EPA's administrative enforcement actions (40 C.F.R. § 22. 13(b)), "where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to [40 C.F.R.] § 22. 18(b)(2) and (3)." The Agency therefore is offering Troy Chemical an opportunity to demonstrate why an enforcement proceeding should not be commenced against it and/or why the penalty EPA might assess against it in a complaint should be reduced. Our goal is to reach a settlement of this matter within 45 days of the date of this letter.

If you are interested in engaging in pre-filing settlement discussions, please contact me so that I can arrange a discussion, at a mutually convenient time, between Agency representatives and any representative(s) or employee(s) of Troy Chemical who would participate in the discussion. EPA will have legal counsel at the meeting. *In light of current coronavirus circumstances, EPA would expect to conduct this discussion virtually or via conference call.* In advance of any such conference call or virtual meeting, please provide EPA with documentary evidence in support of any position you might raise, such as: efforts Troy Chemical has undertaken to attain compliance with the applicable RCRA and regulatory requirements; steps taken to prevent a recurrence of the violative conduct; evidence as to why a reduction in the proposed penalty would be warranted (*i.e.* any evidence that would go to the seriousness of the violation and any good faith efforts that occurred before EPA’s inspection to comply with the applicable requirements, and any other factors you deem appropriate for EPA consideration). If you expect to discuss the financial condition of your firm in relation to any penalties that may be sought, please call me in advance so that we can discuss logistical arrangements for how you should provide financial documentation such as a recent tax returns or an audited financial statement for the current year. Information previously submitted to EPA may be referenced as appropriate.

Any and all information that you provide to EPA in response to this letter is not subject to the requirements of the Federal Rule of Evidence 408 and may subsequently be utilized by EPA in this or another enforcement proceeding. It is our hope that we can address the alleged violations raised in this letter in a mutually satisfactory manner. Indeed, if it appears likely that the parties will be able to reach a negotiated settlement, EPA is prepared to postpone further the issuance of a complaint. If, however, the parties are unable to reach an expeditious resolution **or if EPA does not hear from you within twenty (20) days of this letter about making arrangements for a settlement discussion, EPA is prepared to initiate an enforcement action.**

¹ Proposed penalty numbers have been rounded to the nearest hundred dollars.

If you are interested in reaching an agreement, please contact me, or have your attorney contact me, at 212 637-3213, within 20 days of your receipt of this letter to work out the necessary scheduling arrangements. Thank you in advance for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'A R Chester', with a stylized flourish at the end.

Amy R. Chester
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212 637-3213

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